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Supreme Court of the United States

October Term, 1966

NO. 920

BLOOMFIELD STEAMSHIP COMPANY, *Petitioner*

v.

CHARLES S. HAIGHT, ET AL., *Respondents*

PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals
For The Fifth Circuit

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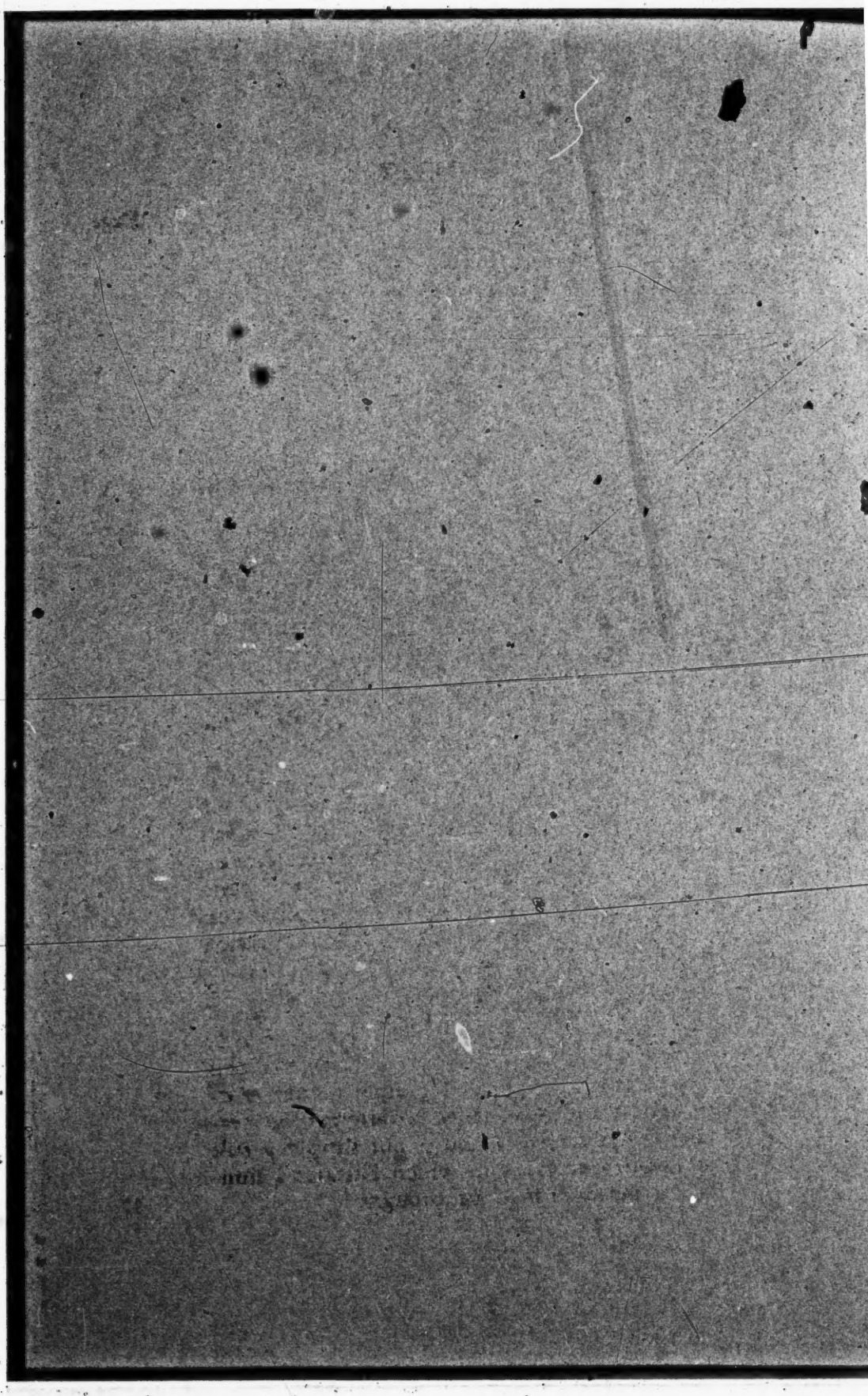

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented for Review	2
Statutes and Supreme Court Rules Involved	4
Statement of the Case	7
Mowinckels and Its English Action	8
The Motions and Matters Relating to New York	8
Jurisdiction of the District Court	10
The Decision of the District Court	10
The Decision of the Court of Appeals	11
Reasons for Granting the Writ	11
1. The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, namely that a potential claimant in a limitation of liability proceeding duly notified of the proceeding and of the District Court's restraining order, and within the jurisdiction of the Court, can with impunity and contrary to the restraining order bring an action in a foreign country against the limitation petitioner	11
2. The Court of Appeals has decided a federal question in a way in conflict with the Admiralty Rules and applicable decisions of this Court, namely that Supreme Court Admiralty Rule 54 confers *jurisdiction* on certain District Courts and is not simply a rule of *venue* specifying in which District a limitation petition shall be brought	17

Page

3. The Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court, namely that a federal District Court is not bound by the Rules of Decision Act, 28 U.S.C. §1652, to follow the decision of a state court of record. The matter for decision before both courts was the same, whether Bloomfield was by the actions of its berth agent there doing business in New York. No change in circumstances between the date of the state court decision and the pertinent date before the District Court was shown, and the New York court decision was not clearly erroneous 20

Conclusion 23

Appendix A—Decision of the United States Court of Appeals, for the Fifth Circuit 25

Appendix B—Judgment on the Decision of the United States Court of Appeals, for the Fifth Circuit 28

Appendix C—Order Denying Motion for Rehearing by the United States Court of Appeals, for the Fifth Circuit 29

Appendix D—Opinion of the United States District Court, for the Eastern District of Louisiana 30

Appendix E—Decision of the New York Supreme Court in Claude C. Lanier v. Bloomfield Steamship Co. 40

LIST OF AUTHORITIES

CASES	Page
Beggs v. Dougherty Overseas, Inc., 287 F.2d 80 (2 Cir. 1961)	23
British Transport Commission v. United States (Duke of York - Haiti Victory), 354 U.S. 129, 77 S.Ct. 1103 (1957)	11, 13, 16
Canada Malting Co. v. Paterson Steamships, Ltd., 285 U.S. 413, 52 S.Ct. 413 (1932)	12
Cole v. Cunningham, 133 U.S. 107, 10 S.Ct. 269 (1890)	16
Continental Grain Company v. The FBL-585, 364 U.S. 19, 80 S.Ct. 1470 (1960)	19
Eagle, The v. Fraser, 8 Wall. (75 U.S.) 15, 19 L.Ed. 365 (1868)	12
Federal Maritime Commission v. DeSmedt, 366 F. 2d 464 (2 Cir. 1966)	15
Fidelity Union Trust Co. v. Field, 311 U.S. 169, 177, 61 S.Ct. 176, 178 (1940)	21, 22
Guillot v. Cenac Towing Company, 366 F.2d 898 (5 Cir. 1966)	14
Hartford Accident & Indemnity Co. v. Southern Pacific Co., 273 U.S. 207, 215, 47 S.Ct. 357, 359 (1927)	13
John K. Gilkinson, The, 156 F. 868 (D.C. N.Y. 1907)	23
Kerr Steamship Company v. United States and FMB, 284 F.2d 61 (2 Cir. 1960)	15
Lanier v. Bloomfield Steamship Company, 150-67 New York Law Journal 12 (1963)	21
Lennon, Ex parte, 166 U.S. 548, 17 S.Ct. 658, 660 (1897)	14
Leonard, In re, 14 F. 53 (D.C. N.Y. 1882)	23
Louisville Underwriters, Re, 134 U.S. 488, 10 S.Ct. 587 (1890)	12
Metropolitan Redwood Lumber Co. v. Doe, 223 U.S. 365, 32 S.Ct. 275, 276 (1912)	14
Minnesota v. Hitchcock, 185 U.S. 373, 22 S.Ct. 650 (1902)	19

CASES

	Page
Montship Lines, Ltd. v. Federal Maritime Board, 295 F.2d 147, at 154 (D. Col. Cir. 1961)	15
Morrison, In re, 147 U.S. 14, 13 S.Ct. 246, 253 (1893)	13
New Orleans, The, & Bayou Sara Mail Co. v. Fernandez, 12 Wall. (79 U.S.) 130, 20 L.Ed. 249 (1869)	19
Norwich & N. Y. Transportation Co. v. Wright, 13 Wall. (80 U.S.) 104, 20 L.Ed. 585, 592 (1872)	18
Oregon Railway & Navigation Co. v. Balfour, et al., 179 U.S. 55, 21 S.Ct. 28 (1900)	19
Providence & N.Y. SS Co. v. Hill Mfg. Co., 109 U.S. 578, 3 S.Ct. 379 (1883)	13, 19
Robles v. Folsom, 239 F.2d 562 (2 Cir. 1956)	22
St. Clair v. Eastern Air Lines, Inc., 302 F.2d 477 (2 Cir. 1962)	23
Securities and Exchange Commission v. Minas de Artemisa, S.A., 150 F.2d 215 (9 Cir. 1945)	15
Steele v. Bulova Watch Co., 344 U.S. 280, 282, 73 S.Ct. 252, 254 (1952)	15
Strubbe v. Sonnenschein, 299 F.2d 185 (2 Cir. 1962)	23
Swift & Co. Packers v. Compania Columbiana Del Caribe, 339 U.S. 684, 70 S.Ct. 861 (1950)	14
Tesoriero v. A/S J. Ludwig Mowinckels Rederi, 133 F.Supp. 352, 1955 A.M.C. 718 (S.D. N.Y. 1955)	12
Titanic, The, 204 F. 295 (S.D. N.Y. 1912)	14
Titanic, The, 218 F. 990 (2 Cir. 1914)	14
United States v. Anchor Line, Ltd., et al., 232 F. Supp. 379 (S.D. N.Y. 1964)	15
United States v. First National City Bank, 379 U.S. 378, 85 S.Ct. 528 (1965)	15
United States v. Pacific & A. R. & N. Co., 228 U.S. 87, 33 S.Ct. 443, 448 (1913)	15
United States v. Ross, Ross & Co., Ltd., 302 F.2d 831, at 834 (2 Cir. 1962)	15
Workman v. Mayor, etc. of New York, 179 U.S. 552, 21 S.Ct. 212 (1900)	12

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner Bloomfield Steamship Company respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above cause on July 27, 1966.

OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals affirming on the opinion below is reported at 363 F.2d 872. It is printed in the Appendix to this petition.

The opinion of the District Court (Ainsworth, D.J.) is reported at 227 F. Supp. 615 and 1964 A.M.C. 1563. It is printed in the Appendix.

JURISDICTION

The original judgment of the Court of Appeals was entered on July 27, 1966. On August 12, 1966, an extension of time to September 1, 1966, for the filing of petitioner's motion for rehearing was granted by the Court of Appeals. The motion for rehearing was filed September 1, 1966, and denied by the Court's order made on September 30, 1966.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. An American and a Norwegian ship collide upon the high seas. The American owners file a petition seeking limitation of liability pursuant to statute (46 U.S.C. §§ 183, et seq.) and post security. Pursuant to Rule 51, Supreme Court Admiralty Rules, the District Court then issues its monition and order restraining "the beginning or prosecution of any or all suits, actions, or legal proceedings of any nature . . . against petitioner . . . except in the present proceedings." The Norwegian owner is carrying on business within that District and within the United States, and it was given in accordance with the Rules proper notice of the limitation proceedings, monition, and restraining order. It ignored the order and prosecuted its claim against the American owner in England.

Can a potential claimant in a limitation proceeding, doing business within the District and within the United States and having been served with the restraining order,

ignore the District Court's restraining order and prosecute its claim "elsewhere than in the limitation proceeding", i.e., in a foreign country? Has the restraining order efficacy over persons within its jurisdiction *only* within the *territorial* limits of the United States, so that even though the Court has *in personam* jurisdiction over a potential claimant that the claimant can nevertheless prosecute its claims outside the United States if it so chooses?

2. Following a collision on the high seas, the American shipowner petitioned for limitation of liability. It filed its petition in the Eastern District of Louisiana in the belief that venue lay in that District under Rule 54, Supreme Court Admiralty Rules. The District Court decided that the petition should have been filed in the New York District. It dismissed the petition for *lack of jurisdiction*, refusing to transfer to the other District as the one of *proper venue*.

Did Rule 54 confer *jurisdiction* on District Courts or did it simply provide for *venue* of limitation of liability proceedings?

3. The New York Supreme Court in a personal injury suit brought by a seaman against Bloomfield Steamship Company in New York City decided that Bloomfield was not doing business in New York simply by having a berth agent in New York which acted for it there. A few days after this decision a libel was filed in New York against Bloomfield. No change of circumstances occurred between the date of decision and the date of the libel.

Was the District Court of Louisiana bound by the Rules of Decision Act (28 U.S.C. § 1652) to follow the New York Supreme Court decision, or could it on the basis of perhaps more detailed evidence of the berth agent's actions

lawfully make the contrary decision that Bloomfield *was* doing business in New York so that it was subject to being sued by the libel filed there?

STATUTES AND SUPREME COURT RULES INVOLVED

Rules of Decision Act

28 U.S.C. § 1652. *"State laws as rules of decision*

"The laws of the several states, except where the Constitution or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

Limitation of Liability Act

46 U.S.C. §183. *"Amount of liability; loss of life or bodily injury; privity imputed to owner; 'seagoing vessel'*

"(a) The liability of the owner of any vessel, whether American or foreign, . . . for any loss, damage, or injury by collision . . . shall not, . . . exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. . . ."

46 U.S.C. § 184. *"Apportionment of compensation*

"Whenever any such . . . loss, . . . is suffered by several freighters or owners of goods, . . . on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of appor-

tioning the sum for which the owner of the vessel may be liable among the parties entitled thereto."

46 U.S.C. §185. *"Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee*

"The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, . . . Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease."

Rules of Civil Procedure

Supplemental Rules for Certain Admiralty and Maritime Claims

Rule F.

Limitation of Liability

* * *

"9' *Venue; Transfer.* The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may

be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district. For the convenience of parties and witneseses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules."

Admiralty Rules of the Supreme Court (Former)

Rule 51. "*Limitation of liability—how claimed*

"The owner or owners of any vessel who shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the Act of March 3, 1851, entitled 'An Act to limit the liability of shipowners and for other purposes' (Sections 183 to 189 of Title 46 of the U. S. Code, 46 U.S.C.A. §§ 183-189) as now or hereafter amended or supplemented, may file a petition in the proper District Court of the United States, as hereinafter specified. . . . With his petition the petitioner may, . . file an interim stipulation, . . .

"Upon the filing of such interim stipulation . . . the court shall issue a monition against all persons asserting claims in respect to which the petition seeks limitation, citing them to file their respective claims with the Clerk of said court . . .

"The said court shall also, on the application of the petitioner, make an order to restrain the further prosecution of all and any suit or suits against the petitioner and/or said vessel in respect to any claim or claims subject to limitation in the proceeding."

Rule 54. "*Courts having cognizance of limited liability procedure*

"The said petition shall be filed and the said proceedings had in any District Court of the United States in which said vessel has been libeled to answer for any claim in respect to which the petitioner seeks to limit liability; or, if the said vessel has not been libeled, then in the District Court for any district in which the owner has been sued in respect to any such claim. When the said vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner, the said proceedings may be had in the District Court of the district in which the said vessel may be, but if said vessel is not within any district, then the petition may be filed in any District Court. The District Court may, in its discretion, transfer the proceedings to any district for the convenience of the parties. . . ."

STATEMENT OF THE CASE

Bloomfield Steamship Company's American-flag vessel the LUCILE BLOOMFELD collided with A/S J. Ludwig Mowinckels Rederi's Norwegian-flag vessel the RONDA on the high seas off LeHavre, France, on October 1, 1963. The RONDA went into LeHavre and sank, with all her cargo.

The LUCILE BLOOMFIELD continued her voyage, and she entered the Eastern District of Louisiana on October 25. As soon as she had entered Bloomfield filed its petition for limitation of liability in that District. It posted bond of $725,000. The Court issued its monition and its order restraining all suits and proceedings elsewhere.

A few minutes after the Bloomfield petition was filed, some owners of cargo lost on the RONDA filed a libel

against Bloomfield and the vessel, but the vessel was not seized because their attorneys were served with the restraining order.

Mowinckels and Its English Action

Mowinckels operates vessels that make numerous voyages into the waters of Louisiana and New York. It has steamship agents in New Orleans and a general agent in New York, but its offices are in Norway.

In accordance with the Rules, Mowinckels New York attorneys, Messrs. Haight, Gardner, Poor & Havens, were served with copy of the monition and restraining order after the Bloomfield petition was filed, and copy was mailed to Mowinckels in Norway, in November, 1963.

When the LUCILE BLOOMFIELD returned to Europe and entered an English port on its next voyage, in January, 1964, it was seized at the instance of Mowinckels, which had in January filed in England an action against the vessel to recover for its losses resulting from the sinking of the RONDA. To secure release of its vessel Bloomfield posted $425,000 security in England.

Bloomfield thereupon filed in the New Orleans District Court its motion for an order directed to Mowinckels and its attorneys, respondents here, to show cause why they should not be held in contempt of the restraining order by instituting and continuing the English action.

The Motions and Matters Relating to New York

By the same New York attorneys for RONDA cargo who filed the libel in New Orleans on October 25, separate libels had been filed against Bloomfield and Mowinckels

in New York for RONDA cargo losses, on October 10 and October 11, 1963. On Bloomfield service had been attempted (and by them refused) on Bloomfield's berth agent States Marine Lines.

Shortly after Bloomfield filed its motion to show cause, these New York RONDA cargo interests appeared specially in the Louisiana District and moved to dismiss the Bloomfield petition on the ground that the New York libel of October 10 was a suit, under Rule 54, that divested the Louisiana District of *jurisdiction*. Also appearing specially, Mowinckels and its attorneys joined in that motion and urged additionally that the Court's restraining order was effective to restrain actions or proceedings only within the territorial limits of the United States.

Bloomfield controverted the motions, urging first that the restraining order was one *in personam* and that since Mowinckels and its attorneys were within the Court's jurisdiction and had notice of the monition and order they were bound to comply with its terms everywhere, and that the District Court as a District Court of the United States had jurisdiction (and hence power to issue the order) even should the Court determine venue was wrongly laid in Louisiana.

Bloomfield further showed that on October 1, 1963, the New York Supreme Court had decided that Bloomfield was not doing business in New York, and it alleged further that it was not doing business there, its only connection with New York being by contract with its berth agent States Marine Lines as found by the New York Court.

After testimony from some of the berth agent's officers and employees was taken, the District Court dismissed the limitation petition, refusing to transfer the proceedings to the New York District.

JURISDICTION OF THE DISTRICT COURT

The District Court had jurisdiction as an admiralty court under the United States Constitution, Article 3, Section 2, Clause 1; 28 U.S.C. § 1333; and the Limitation of Liability Act, 46 U.S.C. §§ 183, 184, and 185; and under former Supreme Court Admiralty Rules 51 and 54, presently F.R.C.P. Supp. Adm. Rule F, partcularly Rule F(9).

DECISION OF THE DISTRICT COURT

The District Court held: First, that "a potential claimant who has not filed his claim in the United States limitation proceeding has the right to pursue his claim in a foreign court if he so chooses and can obtain jurisdiction." Secondly, it held that Supreme Court Admiralty Rule 54 was one of *jurisdiction* and not of *venue*, and that if at the exact time a limitation petition was to be filed a suit had been commenced against a petitioner in a court of competent jurisdiction Rule 54 required that the limitation petition must be filed in that District as the only District having jurisdiction.

Upon examining the evidence of the actions in New York of Bloomfield's berth agent, it determined that Bloomfield was doing business in New York when the libel of October 10 had been filed and that this was accordingly a proper suit under Rule 54 which required filing of the limitation petition in New York. It declined to follow the New York Supreme Court decision in *Lanier v. Bloomfield*.

Since the libel in New Orleans against Bloomfield had not been filed when the limitation petition had already been filed for several minutes, Bloomfield could not have the election accorded by Rule 54 where sued in more than one district.

DECISION OF THE COURT OF APPEALS

After noting that since the decision of the District Court Mowinckels had actually commenced limitation proceedings in the Southern District of New York, citing *RONDA-LUCILE BLOOMFIELD*, 1965 A.M.C. 354, and after briefly summarizing the trial Court's decision, in a *Per Curiam* opinion the Court of Appeals adopted the district judge's opinion as the opinion of the Court and affirmed.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, namely that a potential claimant in a limitation of liability proceeding duly notified of the proceeding and of the District Court's restraining order, and within the jurisdiction of the Court, can with impunity and contrary to the restraining order bring an action in a foreign country against the limitation petitioner.

While petitioner believes that this important question of whether an admiralty court can prevent its plenary powers in a limitation proceeding from being vitiated by enjoining a person within its jurisdiction from proceeding in a foreign country has not been heretofore decided by this Court, it respectfully submits that the instant case is practically the converse of *British Transport Commission v. United States (Duke of York-Haiti Victory)*, 354 U.S. 129, 77 S.Ct. 1103 (1957), where by making claim in a limitation proceeding a person not theretofore within the jurisdiction of the court became subject to the court's orders and judgment like any other claimant, and the

decision below is clearly erroneous because contrary in principle to that decision and to other applicable decisions of this Court and of other Courts of Appeal.

(Of course no argument can nor will be made that orders of a court that has *no jurisdiction* need be obeyed: Where a court has no jurisdiction all its proceedings are nullities. But the decision below is plainly and manifestly erroneous in its reading of Rule 54, and the matter will at this point be presented on that assumption, dealing further below with the matter of the jurisdiction of the Louisiana court.).

The allegations of Bloomfield's show cause motion that respondents had notice of the monition and restraining order long before commencement of the English action were not controverted, and it must therefore be accepted as true. Mowinckels, though a foreign company, had vessels regularly plying the waters of Louisiana and New York, and by doing business was within the court's jurisdiction just as any American corporation. (In fact, in *Tesoriero v. A/S J. Ludwig Mowinckels Rederi*, 133 F.Supp. 352, 1955 A.M.C. 718 (S.D. N.Y. 1955), it had been judicially held a resident of New York.) The matter here was of course one within admiralty jurisdiction, 46 U.S.C. §§ 183, 184, 185; *The Eagle v. Fraser*, 8 Wall. (75 U.S.) 15, 19 L.Ed. 365 (1868); *Canada Malting Co. v. Paterson Steamships, Ltd.*, 285 U.S. 413, 52 S.Ct. 413 (1932); and over *persons* admiralty jurisdiction covers all persons having a general capacity to stand in judgment, *Workman v. Mayor, etc. of New York*, 179 U.S. 552, 21 S.Ct. 212 (1900), following *Re Louisville Underwriters*, 134 U.S. 488, 10 S. Ct. 587 (1890).

An admiralty court particularly in a limitation of liability proceeding has sweeping equitable powers, as put in

Hartford Accident & Indemnity Co. v. Southern Pacific Co., 273 U.S. 207, 215, 47 S.Ct. 357, 359 (1927),

> "It is quite evident from these cases that this Court has by its rules and decisions given the statute a very broad and equitable construction for the purpose of carrying out its purpose, and for facilitating a settlement of the whole controversy over such losses as are comprehended within it, and that all the ease with which rights can be adjusted in equity is intended to be given to the proceeding. It is the administration of equity in an admiralty court. Dowdell v. United States District Judge (C.C.A.), 139 F. 444, 445. The proceeding partakes in a way of the features of a bill to enjoin the multiplicity of suits, a bill in the nature of an interpleader, and a creditor's bill. It looks to a complete and just disposition of a many-cornered controversy, and is applicable to proceedings *in rem* against the ship, as well as to proceedings *in personam* against the owner; the limitation extending to the owner's property as well as to his person. The City of Norwich, 118 U.S. 468, 503, 6 S.Ct. 1150, 30 L.Ed. 134."

It was decided shortly after the enactment of the Limitation of Liability Act that the purpose of the Act was to effect a *concursus* of all claims, *Providence & N. Y. SS Co. v. Hill Mfg. Co.*, 109 U.S. 578, 3 S.Ct. 379 (1883), and that it is not merely a defensive proceeding has been settled by this Court in *British Transport Commission v. United States (Duke of York-Haiti Victory)*, 354 U.S. 129, 77 S.Ct. 1103 (1957).

Nor can there be any doubt of the sweeping power of the court in a limitation proceeding to protect its jurisdiction by the use of injunctions. *In re Morrison*, 147 U.S. 14, 13 S.Ct. 246, 253 (1893), holds that the mere filing of the libel and the offer to give a stipulation conferred

jurisdiction upon the court, and this Court has held that issuance of an injunction prohibiting proceedings elsewhere was not a matter within the district court's discretion, the statute itself having the effect of an injunction. *Metropolitan Redwood Lumber Co. v. Doe*, 223 U.S. 365, 32 S.Ct. 275, 276 (1912), followed in *The Titanic*, 218 F. 990 (2 Cir. 1914).

Of course a person with knowledge of an injunction if within its terms cannot plead he is not bound by it by contending at the time he learned of it he was not a party to the suit, *Ex parte Lennon*, 166 U.S. 548, 17 S.Ct. 658, 660 (1897), nor that he did not read it when served upon him, *The Titanic*, 204 F. 295 (S.D. N.Y. 1912).

Further, to hold that where an American admiralty court has jurisdiction over persons those persons can act without regard to the court and vitiate its authority and control of matters before it by actions deliberately taken in foreign countries is clearly contrary to the decision of this Court in *Swift & Co. Packers v. Compania Columbiana Del Caribe*, 339 U.S. 684, 70 S.Ct. 861 (1950), where it was held that the admiralty court could enjoin (and protect libellants by conditions in its decree) actions abroad of owners of a vessel designed to change the vessel's legal ownership and defeat an attachment by the marshal. This decision has recently been followed by the Court of Appeals for the Fifth Circuit itself, in *Guillot v. Cenac Towing Company*, 366 F.2d 898 (5 Cir. 1966).

In other fields this Court has held Congress may project the impact of its laws beyond the territorial boundaries of the United States. Affirming a decision of the Court of Appeals for the Fifth Circuit holding a person enjoined by a district court could not conduct himself in Mexico

contrarily, in *Steele v. Bulova Watch Co.*, 344 U.S. 280, 282, 73 S.Ct. 252, 254 (1952), this Court held:

> "Petitioner concedes, as he must, that Congress in prescribing standards of conduct for American citizens may project the impact of its laws beyond the territorial boundaries of the United States. Cf. Foley Bros., Inc. v. Filardo, 1949, 336 U.S. 281, 284-285, 69 S.Ct. 575, 577; Blackmer v. United States, 1932, 284 U.S. 421, 436-437, 52 S.Ct. 252, 254; Branch v. Federal Trade Commission, 7 Cir., 1944, 141 F.2d 31. Resolution of the jurisdictional issue in this case therefore depends on construction of exercised congressional power, not the limitations upon that power itself . . ."

In *United States v. First National City Bank*, 379 U.S. 378, 85 S.Ct. 528 (1965), an injunction against actions in a foreign country was upheld where the persons enjoined were within the Court's jurisdiction.

Extraterritorial effect was given to domestic laws also in *United States v. Pacific & A. R. & N. Co.*, 228 U.S. 87, 33 S.Ct. 443, 448 (1913), where the foreign companies were doing business in the United States; and also such effect was given in *Kerr Steamship Company v. United States and FMB*, 284 F.2d 61 (2 Cir. 1960); *Montship Lines, Ltd. v. Federal Maritime Board*, 295 F.2d 147, at 154 (D. Col. Cir. 1961); *Securities and Exchange Commission v. Minas de Artemisa, S.A.*, 150 F.2d 215 (9 Cir. 1945); *United States v. Ross, Ross & Co., Ltd.*, 302 F.2d 831, at 834 (2 Cir. 1962); *Federal Maritime Commission v. DeSmedt*, 366 F.2d 464 (2 Cir. 1966); *United States v. Anchor Line, Ltd., et al.*, 232 F.Supp. 379 (S.D. N.Y. 1964).

The practical results of the Court's holding shows its importance and how it would defeat the purposes of the

Limitation of Liability Act: The petitioner here posted a bond in New Orleans in the amount of $725,000. To release its vessel in England it was required to post a bond for $425,000, and to undergo heavy legal expenses. Certainly having to post double security and to incur heavy expenses defeats the purposes of the Act, which clearly provides the owner's liability is to be limited to his interest in the vessel plus freights. 46 U.S.C. §§ 183 and 185.

Petitioner submits the language of the Act, 46 U.S.C. § 183,

> ". . . Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matters in question shall cease."

plainly shows the Congressional intent to require all persons within the jurisdiction of the court to bring their claims *only* in the American limitation proceeding. Petitioner will not burden this Court with reference to the Congressional intent as reflected in the legislative history and subsequent decisions of this Court further except to refer to its decision in *British Transport Commission v. United States, supra,* where the matters are fully dealt with.

Finally here, in *Cole v. Cunningham,* 133 U.S. 107, 10 S.Ct. 269 (1890), the principle that in equity (and hence admiralty when exercising its equitable powers) control of the person gives the Court jurisdiction to control his actions abroad is plainly put, as follows:

> ". . . Mr. Justice Story states the principle thus: 'But, although the courts of one country have no authority to stay proceedings in the courts of another, they have an undoubted authority to control all persons and

things within their own territorial limits. When, therefore, both parties to a suit in a foreign country are resident within the territorial limits of another country, the courts of equity in the latter may act *in personam* upon those parties, and direct them, by injunction, to proceed no further in such suit. In such a case, these courts act upon acknowledged principles of public law in regard to jurisdiction. They do not pretend to direct or control the foreign court, but, without regard to the situation of the subject-matter of the dispute, they consider the equities between the parties, and decree *in personam* according to those equities, and enforce obedience to their decrees by process *in personam*. * * *' "

2. The Court of Appeals has decided a federal question in a way in conflict with the admiralty rules and applicable decisions of this Court, namely that Supreme Court Admiralty Rule 54 confers *jurisdiction* on certain District Courts and is not simply a rule of *venue* specifying in which District a limitation petition shall be brought.

The error of the Court of Appeals in deciding that Rule 54 of the former Supreme Court Admiralty Rules was *not* a rule of *venue*, but a determination of *jurisdiction* so plainly appears by this Court's promulgation of the new Rule F(9) of the Supplemental Rules for Certain Admiralty and Maritime Claims that it would appear no argument on the point is needed.

The Advisory Committee note would seem to cover the point here completely, as follows.

"(*Paragraph (9) Venue; Transfer*)

"Derived from Admiralty Rule 54. The provision for transfer is revised to conform closely to the

language of 28 U.S.C. §§ 1404(a) and 1406(a), though it retains the existing rule's provision for transfer to *any* district for convenience. The revision also makes clear what has been doubted: that the court may transfer if venue is wrongly laid."

But petitioner would respectfully show, at the risk of being tedious, that shortly after the enactment of the matter this Court plainly stated that Congress conferred *jurisdiction* by the Limitation of Liability Act on all federal courts sitting in admiralty, and that *venue* was provided for by this Court in the Rules which it made pursuant to the Congressional intent. It was in substance so stated in this Court's initial full considerations of the Act, in *Norwich & N.Y. Transportation Co. v. Wright*, 13 Wall. (80 U.S.) 104, 20 L.Ed. 585, 592 (1872), as follows:

"The act does not state what court shall be resorted to, nor what proceedings shall be taken; but that the parties, or any of them, may take 'the appropriate proceedings in any court, for the purpose of apportioning the sum for which, etc.' Now, no court is better adapted than a court of admiralty to administer precisely such relief. It happens every day that the proceeds of a vessel, or other fund, is brought into that court to be distributed amongst those whom it may concern. Claimants are called in by monition, to present and substantiate their respective claims; and the fund is divided and distributed according to the respective liens and rights of all the parties. Congress might have invested the circuit courts of the United States with the jurisdiction of such cases by bill in equity, but it did not. It is also evident that the state courts have not the requisite jurisdiction. Unless, therefore, the district courts themselves can administer the law, we are reduced to the dilemma of inferring that the legislature has passed a law which is incapable of execution. This is never to be done if it can be avoided. We have

> no doubt that the district courts, as courts of admiralty and maritime jurisdiction, have jurisdiction of the matter; and this court, undoubtedly, has the power to make all needful rules and regulations for facilitating the course of proceeding."

Please see also *Providence & N.Y. SS Co. v. Hill Mfg. Co.*, 109 U.S. 578, 3 S.Ct. 379 (1883) and *Oregon Railway & Navigation Co. v. Balfour, et al.*, 179 U.S. 55, 21 S.Ct. 28 (1900).

Furthermore, since every act of a court which does not have jurisdiction is a nullity, and once it appears that the court lacks jurisdiction the only action it can take is to dismiss the suit, *The New Orleans & Bayou Sara Mail Co. v. Fernandez*, 12 Wall. (79 U.S.) 130, 20 L.Ed. 249 (1869), and its lack of jurisdiction may be raised at any time, *Minnesota v. Hitchcock*, 185 U.S. 373, 22 S.Ct. 650 (1902), it is of great moment whether the rule relating to the district in which a limitation petition is to be filed is one of *venue* or jurisdiction: If the question of jurisdiction were raised more than six months after the date of written demand and the Court should determine the petition should have been filed elsewhere and it therefore had no jurisdiction, then a petitioner would have lost his statutory right to limit, for not having filed his petition within the six months period.

Finally, it is submitted dismissing the petition instead of transferring it to the New York district is *contra* to this Court's decision in *Continental Grain Company v. The FBL-585*, 364 U.S. 19, 80 S.Ct. 1470 (1960), and to Rule 54 itself, and that the matter is of continuing importance since under the new Rule F(9) the instant case would stand for a dismissal of a petition where venue was wrongly laid when justice dictates its transfer.

As will be shown below, a petitioner can well and justifiably believe that venue is properly laid and have an adverse determination made by a District Court after evidence has been taken, so that his rights are greatly prejudiced without his being able reasonably to foresee such a result.

3. The Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court, namely that a federal District Court is not bound by the Rules of Decision Act, 28 U.S.C. §1652, to follow the decision of a state court of record. The matter for decision before both courts was the same, whether Bloomfield was by the actions of its berth agent there doing business in New York. No change in circumstances between the date of the state court decision and the pertinent date before the District Court was shown, and the New York court decision was not clearly erroneous.

Bloomfield during all times here pertinent was party to a contract by which States Marine Lines acted as its berth agent in New York (and elsewhere). None of its ships called at New York ports, and its only connection with the State of New York was through its berth agent. One of the witnesses subpoenaed by the cargo movants and whose deposition was before the District Court was the general counsel for States Marine Lines. He testified (without contradiction by any evidence) that he was thoroughly familiar with the berth agency contract and the duties of a berth agent, that he had attended upon the depositions and had heard all the testimony given by the witnesses describing the New York activities carried on on Bloomfield's behalf by the berth agent, and that these activities were only those that a berth agent was employed to perform. R. 427-428.

In the case of *Lanier v. Bloomfield Steamship Company*, the New York Supreme Court, County of New York, on October 1, 1963, after hearing on a motion to dismiss decided that

> "Motion by defendant foreign corporation, appearing specially, to vacate service of a summons is granted. On the conceded facts, it does not appear that it was doing business in this state at the time of the service so as to bring it within the provisions of section 229 of the Civil Practice Act (now section 311 (1) of the Civil Practice Law and Rules).
>
> "This is a personal injury suit of a seaman, under the Jones Act, against a foreign corporation, for injuries sustained aboard a ship at sea, going between Gulf ports and Europe. Neither plaintiff or any witnesses are residents of New York State.
>
> "The mere solicitation in this state of cargo for transportation outside this state by a berth agent of defendant does not constitute the necessary doing of business here by the defendant to permit of valid service upon it by service upon the berth agent.
>
> "Absent any compelling reason or special circumstance, the Court declines to entertain jurisdiction of the action. The motion is granted.".

This decision is reported at 150-67 New York Law Journal 12 (1963). It is here printed in the Appendix, page 40.

In *Fidelity Union Trust Co. v. Field*, 311 U.S. 169, 177, 61 S.Ct. 176, 178 (1940), this Court held

> ". . . The highest state court is the final authority on state law (citing cases), but it is still the duty of the federal courts, where the state law supplies the rule of decision, to ascertain and apply that law even

> though it has not been expounded by the highest court of the State. See Ruhlin v. New York Life Ins. Co., 304 U.S. 202, 58 S.Ct. 860, 862. An intermediate state court in declaring and applying the state law is acting as an organ of the State and its determination, in the absence of more convincing evidence of what the state law is, should be followed by a federal Court in deciding a state question . . .
>
> "The question has practical aspects of great importance in the proper administration of justice in the federal courts. It is inadmissible that there should be one rule of state law for litigants in the state courts and another rule for litigants who bring the same question before the federal courts owing to the circumstances of diversity of citizenship."

This case arose under the diversity jurisdiction of the federal courts, and of course the decision is equally valid in a limitation case such as the instant one since the Limitation of Liability Act grants relief whether a suit be filed in a state or federal court.

The *Fidelity Union Trust Co. v. Field* case of course dealt with the inferior New Jersey Chancery Court decision (absent a New Jersey final appellate court decision), and it was followed by the Court of Appeals for the Second Circuit in following the New York law as declared by a New York inferior court of record, the Surrogate Court, in *Robles v. Folsom,* 239 F.2d 562 (2 Cir. 1956). Here by statute the New York Supreme Court is co-equal with the New York Surrogate Court, both being courts of record. *Judiciary Law,* Sec. 2, paragraphs 4 and 8 (reprinted in *McKinney's Consolidated Laws of New York,* V. 29, Art. 2, Sec. 2, P. 23.) Other cases by the Court of Appeals for the Second Circuit holding inferior state court decisions are to be followed unless it clearly appeared

they were wrongly decided are *Beggs v. Dougherty Overseas, Inc.*, 287 F.2d 80 (2 Cir. 1961), *Strubbe v. Sonnerschein*, 299 F.2d 185 (2 Cir. 1962), and *St. Clair v. Eastern Air Lines, Inc.*, 302 F.2d 477 (2 Cir. 1962).

The Court of Appeals was therefore in error in holding that the October 10, 1963, libel filed against Bloomfield in New York was a "suit" within the plain words of Rule 54: Since it was not then doing business in New York, the libel was not validly filed, for to be a valid suit under the Rule the limitation petitioner must be sued where he is amenable to process (unless of course he enters an appearance voluntarily, not done here). *The John K. Gilkinson*, 156 F. 868 (D.C. N.Y. 1907); *In re Leonard*, 14 F. 53 (D.C. N.Y. 1882). In *Gilmore and Black on Admiralty*, p. 680, n. 47, the cases and Rule are likewise so construed.

Bloomfield accordingly followed Rule 54 strictly by filing its petition in the Eastern District of Louisiana: Its vessel was there, the vessel had not been libeled elsewhere, and no suit had been commenced in any other district.

CONCLUSION

A Writ of Certiorari should be granted to review the decision of the Court of Appeals herein.

Respectfully submitted,

ROBERT EIKEL
Counsel for Petitioner
205 Oil & Gas Building
Houston, Texas 77002

APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 21,462

BLOOMFIELD STEAMSHIP COMPANY, *Appellant,*

v.

CHARLES S. HAIGHT, ET AL, *Appellees.*

Appeal from the United States District Court for the Eastern District of Louisiana

---

(July 27, 1966.)

Before WISDOM and GEWIN, Circuit Judges, and BOOTLE, District Judge.

PER CURIAM: October 1, 1963, near Le Havre, France, the appellant's S.S. LUCILLE BLOOMFIELD collided with the RONDA, owned by A/S J. Ludwig Mowinckels Rederi. The RONDA proceeded into the port but sank the next day at the quay. Its cargo was a total loss. Mowinckels is a Norwegian Shipping Company operating ships in and out of United States ports and maintaining a permanent agent in New York. Bloomfield is a Delaware corporation, with offices in Louisiana and Texas, operating ships in and out of Gulf Coast ports.

October 9, 1963, certain cargo claimants, including International Paper Company, filed a libel in the United States District Court for the Southern District of New York against Bloomfield Steamship Company *in personam* and against the S.S. LUCILLE BLOOMFIELD *in rem* to recover damages of $500,000 sustained as a result of the collision. October 25, 1963, BLOOMFIELD STEAMSHIP COMPANY filed a petition for limitation of liability in the District Court for the Eastern District of Louisiana. On the same day the district court issued a monition order under 46 U.S.C. § 185, restraining and enjoining the filing or prosecution of any and all suits or legal proceedings of any nature against petitioner and the S.S. LUCILLE BLOOMFIELD, except in the present proceeding.

After Bloomfield posted a $600,000 bond, the LUCILLE BLOOMFIELD left New Orleans. In January 1964 Mowinckels instituted proceedings in an English admiralty court against Bloomfield and the LUCILLE BLOOMFIELD. The vessel was released from the custody of the English court only upon the filing of a $425,000 bond.

March 30, 1964, Bloomfield filed a libel in the District Court for the Eastern District of Louisiana against Mowinckels to recover collision damages in the amount of $15,000. On the same day Bloomfield fied a petition for exoneration from or limitation of liability in the District Court for the Southern District of New York in the proceeding instituted against it (64 A.D. 303), and March 31, 1964 Mowinckels filed a petition from or limitation of liability. *Ronda-Lucille Bloomfield*, 1965 A.M.C. 354.

In the district court Bloomfield contended that it was not amenable to service of process in New York growing out of the libel filed in the Southern District of New

York, because it was not doing business in the State of New York. Bloomfield also moved to have Mowinckels cited for contempt of the court's injunction against suits. Mowinckels appeared specially to defend this motion. International Paper moved to dismiss the limitation of liability petition on the ground that it had not been filed in the proper district.

The district court dismissed the petition for limitation of liability on the ground that Bloomfield was in fact doing business in New York; that therefore Rule 54 was not complied with, because limitation proceedings should have been filed in the United States District Court for the Southern District of New York. The court held that Mowinckels was not in contempt on the ground that the injunction had no extraterritorial effect.

The able district judge, Judge Robert A. Ainsworth has written a careful opinion documenting his holding. *Bloomfield Steamship Company v. Charles S. Haight, et al.*, E.D. La. 1964, 227 F.Supp. 615. No good purpose would be served by paraphrasing that opinion and adding a few citations of cases. We adopt the district judge's opinion as the opinion of this Court.

The judgment is AFFIRMED.

APPENDIX B

(Judgment of the Court, page 484, Volume III, of the Transcript)

JUDGMENT

United States Court of Appeals

FIFTH CIRCUIT

October Term, 1964

NO. 21,462

D. C. Docket No. 6205 - Admiralty

BLOOMFIELD STEAMSHIP COMPANY, *Appellant*

-versus-

CHARLES S. HAIGHT, ET AL., *Appellees*

Appeal from the United States District Court for the Eastern District of Louisiana

Before Wisdom and Gewin, Circuit Judges, and Bootle, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION HEREOF it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Bloomfield Steamship Company, be condemned to pay the costs of this cause in this court for which execution may be issued out of the said district court.

Dated: July 27, 1966.

Issued as mandate:

APPENDIX C

(Page 538, Volume III, of the Transcript)

United States Court of Appeals

FIFTH CIRCUIT

October Term, 1964

NO. 21,462

D. C. Docket No. 6205 - Admiralty

BLOOMFIELD STEAMSHIP COMPANY, *Appellant*

-versus-

CHARLES S. HAIGHT, ET AL., *Appellees*

Appeal from the United States District Court for the Eastern District of Louisiana

---

(September 30, 1966)

ON PETITION FOR REHEARING

Before Wisdom and Gewin, Circuit Judges, and Bootle, District Judge.

PER CURIAM:

It is ordered that the petition for rehearing filed in the above numbered and captioned cause is hereby denied.

APPENDIX D

United States District Court

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

IN THE MATTER OF BLOOMFIELD STEAMSHIP COMPANY, AS OWNER OF THE STEAMSHIP LUCILE BLOOMFIELD, PRAYING FOR EXONERATION FROM, OR LIMITATION OF, LIABILITY

NO. 6205

IN ADMIRALTY DIVISION D

AINSWORTH, District Judge:

On October 1, 1963, the SS LUCILE BLOOMFIELD, owned and operated by Bloomfield Steamship Company, collided on the high seas outside the Port of LeHavre, France, with a Norwegian flag vessel, M/V RONDA, owned by A/S J. Ludwig Mowinckels Rederi. The RONDA continued to LeHavre but capsized and sank at the quay as a result of a fracture to her hull. The LUCILE BLOOMFIELD was able to resume her voyage and return to the United States.

International Paper Company, et al., owners of cargo aboard the RONDA, filed a libel on October 9, 1963 in the United States District Court for the Southern Dis-

trict of New York against Bloomfield Steamship Company *in personam* and the SS LUCILE BLOOMFIELD *in rem* to recover for damages sustained as a result of the collision. Sixteen days later, on October 25, 1963, Bloomfield Steamship Company, as owner of the SS LUCILE BLOOMFIELD, filed its petition in this court praying for exoneration from, or limitation of, liability. On the same day we issued a monition order in the usual form under 46 U.S.C.A. § 185, restraining and enjoining the beginning of prosecution of any and all suits, actions or legal proceedings of any nature against petitioner and the SS LUCILE BLOOMFIELD, except in the present proceedings, in respect to any claim arising out of the collision, until the hearing and determination of this proceeding. The order was duly published in a daily newspaper in New Orleans. The restraining order was served by petitioner on Messrs. Haight, Gardner, Poor & Havens, New York attorneys for the RONDA, and a copy was mailed to Mowinckels, owner of the RONDA, at Bergen, Norway.

A few minutes after the filing of the limitation proceeding, and without knowledge thereof, Westchester Fire Insurance Company, underwriter of cargo aboard the RONDA, filed a libel in this court against the SS LUCILE BLOOMFIELD and Bloomfield Steamship Company; the libel was later withdrawn on December 16, 1963.

On January 24, 1964, proceedings were instituted in an admiralty court in England by Mowinckels, owner of the RONDA, against Bloomfield and the LUCILE BLOOMFIELD. The LUCILE BLOOMFIELD was seized at Southampton, England, by the Admiralty Marshal and released only after furnishing security in the amount of $420,000.

Bloomfield contends that it is not amenable to service of process in New York growing out of the libel filed in the federal court in the Southern District of New York, because it is not doing business in the State of New York. Two related motions are presented for decision; namely, the motion of Bloomfield against Haight, Gardner, Poor & Havens, New York counsel for the RONDA, and Mowinckels, owner of the RONDA, for contempt for prosecuting its claim in the English admiralty court after issuance of our restraining order on October 25, 1963, and the motion to dismiss the limitation proceeding for lack of jurisdiction.

I.

Haight, Gardner, Poor & Havens and the owners of the RONDA excepted to the contempt action, contending that the owners of the RONDA are not parties to the limitation proceeding and that our restraining order of October 25, 1963 can have no extra-territorial effect beyond the limits of the United States as would prohibit bringing an action in an English court, even if New York counsel for and the owners of the RONDA were aware of our restraining order, having been served with copies thereof as heretofore stated.

We assume arguendo the well-pleaded allegations of the motion for contempt. From these allegations it is averred that Haight, Gardner, Poor & Havens and the RONDA's owners knew of the existence of our restraining order when they caused their English solicitors to file a libel in the English admiralty court and caused the vessel to be seized. However, an order or decree in a limitation proceeding is given mere domestic and not international recognition. Gilmore and Black, *The Law of Admiralty*, p. 739.

Justice Holmes' opinion in *The Titanic*, 233 U.S. 718, 34 S.Ct. 754 (1914), clearly assumes the merely domestic effect of a limitation decree, according to Gilmore and Black (p. 739). In his opinion Justice Holmes said (233 U.S. 718, 732, 34 S.Ct. 754, 756):

> "The question is not whether the owner of the Titanic by this proceeding can require all claimants to come in, and can cut down rights vested under English law, as against, for instance, Englishmen living in England who do not appear."

Litigants who chose to sue the owners of the TITANIC in United States courts were limited in their recovery by the American law of limitation which was held to be applicable rather than the English limitation law despite the fact that the TITANIC was a British flagship lost on the high seas after collision with an Atlantic iceberg.

In the related case of *The Titanic*, 2 Cir. 1915, 225 F. 747, foreign claimants who had filed in the American limitation proceeding were permitted to withdraw their claims though it appeared that the purpose of the withdrawal was to proceed in the English courts where a better recovery could be had. The court held that the district court could not retain jurisdiction for the reason that if it released the claimants they might get relief in some other tribunal. It said (p. 748):

> "When they have withdrawn they are as free from it for all purposes as if they never had been parties."

That being true, a potential claimant who has not filed his claim in the United States limitation proceeding has the right to pursue his claim in a foreign court if he so chooses and can obtain jurisdiction. The fact that the

owners of the RONDA and their counsel were aware of the limitation proceeding here when they caused their libel to be filed in an English admiralty court does not preclude them under such circumstances from seeking enforcement of their rights in the English courts. *The Duke of York-Haiti Victory,* 354 U.S. 129, 77 S.Ct. 1103 (1957). See also *Kloeckner Reederei Und Kohlenhandel v. A/S Hakedal,* 2 Cir., 1954, 210 F.2d 754; *Motor Distributors v. Olaf Pedersen's Rederi A/S,* 5 Cir., 1956, 239 F.2d 463. In *The Duke of York,* the Supreme Court held that an injunction against suits being filed in foreign jurisdictions would be ineffective unless comity required its recognition. Comity as between the United States and Great Britain is not shown to exist.

The motion for contempt is denied.

II.

The motion to dismiss the limitation proceeding is grounded on lack of jurisdiction for failure of petitioner to comply with Supreme Court Admiralty Rule 54 which provides as follows:

> "Rule 54. Courts having cognizance of limited liability procedure.
>
> "The said petition shall be filed and the said proceedings had in any District Court of the United States in which said vessel has been libeled to answer for any claim in respect to which the petitioner seeks to limit liability; or, if the said vessel has not been libeled, then in the District Court for any district in which the owner has been sued in respect to any such claim. When the said vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner, the said proceedings may be had in the District Court of the district

in which the said vessel may be, but if said vessel is not within any district and no suit has been commenced in any district, then the petition may be filed in any District Court. The District Court may, in its discretion, transfer the proceedings to any district for the convenience of the parties. If the vessel shall have already been sold, the proceeds shall represent the same for the purposes of these rules. Amended June 21, 1948."

Movers contend that Bloomfield was sued in the New York federal court sixteen days prior to filing of the limitation proceeding here; therefore, that under Admiralty Rule 54, the limitation proceeding must also be filed in the same New York federal court. However, petitioner Bloomfield contends that it was not properly sued in New York and is not amenable to process there because it is not doing business in the State of New York. The critical question then for decision is whether Bloomfield is actually doing business in New York. If it is, there is no question that the New York suit was filed first and was the only suit pending when the limitation was filed in this court. The suit of Westchester Fire Insurance Company versus the SS LUCILE BLOOMFIELD and Bloomfield Steamship Company was filed several minutes after the limitation was filed here, and there is authority that where there are several causes of action pending when the limitation petition is filed, there is nothing in the rule which in any way indicates that it must be or should follow the venue of the first suit. *In Re Petition of Oskar Tiedemann & Company*, 3 Cir., 1958, 259 F.2d 605. But in *Tiedemann* the court held that where there is just one suit or libel filed, as was the case here, the shipowner has no choice but to bring his petition in the only court where litigation is pending against his vessel. Under the circumstances, the New York federal

court is the proper court for filing of the limitation proceeding, and under Admiralty Rule 54 is the only one in which the limitation could be filed if it be found that Bloomfield was doing business in New York at the time suit was filed in the United States court in New York.

In a similar case, *In Re Butcher*, D.C. S.D. Tex., 1943, 52 F. Supp. 385, suit was pending in the United States District Court for the Eastern District of Louisiana against the owners of a barge for damages growing out of an explosion. The vessel owners filed their limitation petition in the United States District Court for the Southern District of Texas when one of the barges was within the jurisdiction of that court. But the Texas federal court declined to entertain jurisdiction of the limitation proceeding and granted the motion to dismiss the petition because of the prior filing of the suit in this court.

In order to determine the facts relative to Bloomfield's doing business in New York, depositions were taken by movers of certain employees of Bloomfield's New York agent on February 7, 10 and 11, 1964. It is shown that Bloomfield's ships do not call at the Port of New York. However, Bloomfield has a berth agent in New York, namely, States Marine Lines, Inc. and its wholly owned subsidiary, States Marine-Isthmian Agency, Inc. States Marrine solicits business for Bloomfield in New York, and during the year 1963, 4.76 per cent of tonnage of the cargoes carried by Bloomfield were contracted for in New York by its berth agent and the bills of lading issued by the berth agent for such cargoes constituted 7.32 per cent by number of the total number of bills of lading issued by the company.

The two States Marine companies have their head office at 90 Broad Street, New York City. The Agency contract

was made in 1954 but since 1956 most of the services performed for Bloomfield had been done by States Marine-Isthmian, to whom Bloomfield makes payment for fees and commission owed by it. States Marine advertises for Bloomfield in the *New York Journal of Commerce* and provides that paper with sailing schedules of Bloomfield ships. States Marine is listed in the telephone tickler of the *Journal of Commerce* as agent for Bloomfield. States Marine has a staff of fifteen sales representatives, all of whom solicit cargo for Bloomfield in the New York area, and one man, Androvette, is the Bloomfield specialist who has available all data concerning activities of Bloomfield vessels, their cargoes, manifests, stowage plans, schedules and daily position.

When Bloomfield, as owner of the SS NEVA WEST, sued the United States Lines in the New York federal court in 1961, it alleged that it was a Texas corporation with an office at 90 Broad Street, New York. Contracts confirming bookings for Bloomfield are issued to shippers and freight forwarders through the New York office of States Marine which also issues bills of lading to shippers for shipments on Bloomfield vessels and accepts and answers inquiries and discusses special transportation problems of local shippers relative to Bloomfield services. States Marine's New York office collects freight moneys for Bloomfield through its New York office. States Marine also makes recommendation to Bloomfield for the scheduling of voyages.

The leading cases on the subject of whether a corporation is doing business in a state are found in United States Supreme Court decisions in *International Shoe Co. v. State of Washington, Etc.*, 326 U.S. 310, 66 S.Ct. 154 (1945) and *McGee v. International Life Insurance Company*, 355 U.S. 220, 78 S.Ct. 199 (1957), which cites with approval

International Shoe Co. The Supreme Court held in *International Shoe Co.* "that 'due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." ' " In *McGee*, the court said that "a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents." The test is therefore whether there are minimal business contacts sufficient to justify such a finding without offending against traditional notions of fair play and substantial justice. We are satisfied that the facts amply disclose a considerable doing of business in the State of New York. Bloomfield has pointed out that the Supreme Court of the State of New York (Justice Loreto) in *Lanier v. Bloomfield Steamship Co.*, in 1963, held that Bloomfield was not doing business in the State of New York. We do not know what facts that court had before it in making this determination. We are of the belief that if it had the evidence furnished us in this case it would have decided otherwise.[1] Nevertheless, we are obliged to make an independent determination ourselves of the facts, and we hold that under

[1] The memorandum opinion in **Lanier v. Bloomfield Steamship Co.** states in part that "On the conceded facts, it does not appear that it was doing business in this state at the time of the service so as to bring it within the provisions of section 229 of the Civil Practice Act (now section 311(1) of the Civil Practice Law and Rules)." And the decision also states "The mere solicitation in this state of cargo for transportation outside this state by a berth agent of defendant does not constitute the necessary doing of business here by the defendant to permit of valid service upon it by service upon the berth agent." The court therefore declined jurisdiction. The evidence before us goes far beyond "mere solicitation" as we have pointed out in our brief summary of the facts.

the rule of the *International Shoe* and *McGee* cases it has been established that Bloomfield is in fact doing business in the State of New York. Under the circumstances, Admiralty Rule 54 has not been complied with because limitation proceeding should have been filed in the United States District Court for the Southern District of New York. Accordingly, the limitation proceeding is dismissed for failure to comply with Rule 54.

Original Signed
ROBERT A. AINSWORTH, JR.
United States District Judge

New Orleans, Louisiana
March 13, 1964

APPENDIX E

SUPREME COURT OF THE STATE OF NEW YORK, SPECIAL TERM PART I, NEW YORK COUNTY at the Courthouse thereof, 60 Vesey Street, New York 7, New York.

Present:

Hon. CHARLES A. LORETO
Justice

CLAUDE C. LANIER	§	SPECIAL TERM PART I
	§	
—against—	§	Oct. 1, 1963
	§	
BLOOMFIELD STEAMSHIP CO.	§	RECEIVED FROM JUSTICE

The following papers numbered 1 to 10 read on this motion argued No. 26 on Calendar of Sep. 19, 1963

Notice of Motion and Affidavits Annexed & exhibits

Papers numbered 1-10

Motion by defendant foreign corporation, appearing specially, to vacate service of a summons is granted. On the conceded facts, it does not appear that it was doing business in this state at the time of the service so as to bring it within the provisions of section 229 of the Civil Practice Act (now section 311 (1) of the Civil Practice Law and Rules).

This is a personal injury suit of a seaman, under the Jones Act, against a foreign corporation, for injuries sustained aboard a ship at sea, going between Gulf ports and Europe. Neither plaintiff or any witnesses are residents of New York State.

The mere solicitation in this state of cargo for transportation outside this state by a berth agent of defendant does not constitute the necessary doing of business here by the defendant to permit of valid service upon it by service upon the berth agent.

Absent any compelling reason or special circumstance, the Court declines to entertain jurisdiction of the action. The motion is granted.

FILED
Oct -1 1963
New York
County Clerk's Office

Dated Oct 1 1963 (Initialled) C. A. L.
J. S. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 920

BLOOMFIELD STEAMSHIP COMPANY,
Petitioner,

v.

CHARLES S. HAIGHT, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

REASONS FOR DENYING THE WRIT

We respectfully submit that under the criteria established by Rule 19 none of the three questions presented warrants review by this Honorable Court. In ruling upon the First Question, that an injunction has no extra-territorial effect in a limitation of liability proceeding, the Courts below were following long-settled principles established by this Court and the Court of Appeals for the Second Circuit; the Second Question, affirming the District Court's power to dismiss a limitation petition which did not comply with former Admiralty Rule 54, is of no current interest in view of the July 1, 1966 amendment of the Federal Rules of Civil Procedure to embrace Admiralty actions; and the Third Question, whether two courts are obliged to apply a rule of law in the same manner when the facts are found to be different, certainly does not warrant the attention of this Court.

1. In holding that an injunction issued pursuant to the United States Limitation of Liability Act does not have extra-territorial effect, the Courts below followed well-established precedent.

(a) *Prior interpretations of the Limitation Act reject extra-territorial effect.*

Relying upon and construing this Court's decisions in *The Titanic,* 233 U. S. 718, 34 S. Ct. 754 (1914), and *British Transport Commission* v. *United States (Duke of York-Haiti Victory),* 354 U. S. 129, 77 S. Ct. 1103 (1957), the Courts below correctly held that an injunction in a limitation proceeding has only domestic, not international effect (Appendix D to Petition, pages 32-33). In *Titanic* this Court recognized that a United States court's limitation injunction does not require all potential claimants to file claims in that court:

> "* * * It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out. *Butler* v. *Boston & Savannah Steamship Co.,* 130 U. S. 527. The question is not whether the owner of the Titanic by this proceeding can require all claimants to come in and can cut down rights vested under English law, as against, for instance, Englishmen living in England who do not appear. It is only whether those who do see fit to sue in this country are limited in their recovery irrespective of the English law. * * *" (233 U. S. at pp. 732-733)

In *British Transport,* which Petitioner suggests (p. 11) is "practically the converse" of the present case, a claim had been filed by the other shipowner, but this Court expressly pointed out that a limitation injunction would not be ef-

fective to compel foreign claimants to claim in a United States limitation proceeding:

> "* * * While it is true that no compulsion could be exerted on foreign claimants to file claims and some would not do so thus preventing the determination of fault from being *res judicata* as to them; and while an injunction against suits being filed in foreign jurisdictions would be ineffective unless comity required its recognition; and assuming all this would encourage the filing of foreign suits and the levying of attachments on any offending American vessel while in a foreign port, or for that matter against any vessel of the same American owner; still this would have little practical effect on the operation of our limitation law. Most foreign claimants are foreign shipowners whose vessels visit American ports and are subject to like action by claimants living here. * * *" (345 U. S. at p. 142)

The Court of Appeals for the Second Circuit reached the same conclusion as to the purely domestic effect of a United States limitation proceeding in the Titanic litigation, and the Courts below relied upon and followed that interpretation, as stated in the Opinion of the District Court (Appendix D to Petition, p. 33):

> "In the related case of *The Titanic,* 2 Cir., 1915, 225 F. 747, foreign claimants who had filed in the American limitation proceeding were permitted to withdraw their claims though it appeared that the purpose of the withdrawal was to proceed in the English courts where a better recovery could be had. The court held that the district court could not retain jurisdiction for the reason that if it released the claimants they might get relief in some other tribunal. It said (p. 748):

> 'When they have withdrawn they are as free from it for all purposes as if they never had been parties.'
>
> That being true, a potential claimant who has not filed his claim in the United States limitation proceeding has the right to pursue his claim in a foreign court if he so chooses and can obtain jurisdiction.***"

The question presented in this case is not, as Petitioner would have it, whether a District Court has power to require parties to litigation before it to take or refrain from action outside its jurisdiction, but whether Congress gave the District Courts power to enjoin potential claimants, who had not filed claims, from suing a limitation petitioner in the courts of another country. The *Titanic* and *British Transport* decisions of this Court answer in the negative. Principles of statutory construction also compel a negative answer.

(b) *Principles of statutory construction reject extra-territorial effect.*

As shown by Petitioner's quotation (p. 15) from *Steele* v. *Bulova Watch Co.*, 344 U. S. 280, 73 S. Ct. 252 (1952), even where Congress has the power to enact laws having extra-territorial effect upon American citizens, whether in a given case Congress has done so "depends on construction of exercised congressional power, not the limitations upon that power itself" (344 U. S. at pp. 282-283), and in determing that issue, the Court said:

> "* * *This Court has often stated that the legislation of Congress will not extend beyond the boundaries of the United States unless a contrary legislative intent appears. * * *" (344 U. S. at p. 285)

This canon of statutory construction was summarized in *American Banana Co.* v. *United States Fruit Co.*, 213 U. S. 347, 357, 29 S. Ct. 511 (1909):

> "The foregoing considerations would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' *Ex parte Blain, In re Sawers,* 12 Ch. Div. 522, 528; *State* v. *Carter,* 27 N. J. (3 Dutcher) 499; *People* v. *Merrill,* 2 Parker, Crim. Rep. 590, 596. Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch. * * *"

(c) *Construction of the wording of the Act rejects extra-territorial effect.*

Section 185 of the Limitation of Liability Act provides that upon the filing of a petition as therein prescribed, "all claims and proceedings against the owner with respect to the matter in question shall cease." The foregoing language has been construed by this Court to constitute a "statutory injunction" directed to and binding upon the courts themselves. This of necessity can only refer to courts subject to Congress' authority.

Thus in *Providence & N. Y. SS. Co.* v. *Hill Mfg. Co.*, 109 U. S. 578, 3 S. Ct. 379 (1883), this Court held that a final decree in a New York limitation of liability proceeding was a bar to an action in a Massachusetts state court on the ground that the Limitation of Liability Act "is binding on all courts and jurisdictions throughout the United

States" (109 U. S., at 590), the injunction contained in the Act applying "as well to 'claims and proceedings' in State courts as to those in the federal courts" (id. at 600). The Court held that when a limitation proceeding was commenced under the act, "it became the duty of all courts before which any of such claims were prosecuted . . . to suspend further action upon said claims. * * * It was the duty of the court . . . to have obeyed the injunction of the Act of Congress, which declared that 'all claims and proceedings shall cease.'" (id. at 599, 601).

This view of the Limitation Act was reiterated in *The San Pedro*, 223 U. S. 365, 32 S. Ct. 275 (1912), again holding the statutory injunction binding upon courts subject to the laws of the United States:

> "* * * In that situation, the jurisdiction of the court to hear and determine every claim in that proceeding became exclusive. It was then the duty of every other court, Federal or state, to stop all further proceedings in separate suits upon claims to which the limited liability act applied.
>
> Nor is the issuance of an injunction necessary to stop proceedings in separate or independent suits upon such claims. Power to grant an injunction exists under § 4285, Revised Statutes, when necessary to maintain the exclusiveness of the jurisdiction; but when the procedure provided by rule 54 has been followed and a monition has issued 'against all persons claiming damages . . . citing them to appear before said court and make proof of their respective claims,' etc., it is the duty of every other court, when the pendency of such a liability petition is pleaded, to stop. The very nature of the proceeding and the monition has the effect of a statutory injunction. Indeed, that is the express declaration of the statute." (223 U. S. at p. 372)

We submit that the purely domestic effect of the Limitation Act necessarily follows from this Court's construction of the Act's "statutory injunction" upon the courts, for it can only concern the state and federal courts subject to the authority of Congress.

2. Interpretation of Former Admiralty Rule 54

Rule 54 (quoted at p. 7 of Petition) directed that in cases where suit has been commenced against a shipowner, a petition for limitation of liability "shall" be filed in a district in which the owner has been sued. Petitioner Bloomfield ignored that requirement, and the District Court dismissed the petition "for failure to comply with Rule 54" (Opinion, Appendix D to Petition, p. 39).

Rule F(9) of the Supplemental Rules for admiralty claims under the Federal Rules of Civil Procedure (quoted at pp. 5-6 of Petition) has now been substituted for Admiralty Rule 54, and Rule F(9) specifically provides that if "venue is wrongly laid, the Court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought." Thus, the present wording of the Rule makes clear the power of a District Court to dismiss a petition which has been filed in the wrong district.

We submit that it is an imposition upon the time of this Court to ask that it deal further with the question of interpretation of former Admiralty Rule 54, particularly in view of the fact that following the March 13, 1964 dismissal by the District Court below of Bloomfield's limitation proceeding herein, Bloomfield on March 30, 1964 filed a timely limitation proceeding in the United States District Court for the Southern District of New York, as noted in the decision below of the Court of Appeals for the Fifth Circuit (Appendix A to Petition, p. 26).

3. No issue appropriate for review by this Court is raised by the fact that the District Court below, after taking evidence, determined that Petitioner Bloomfield was doing business within the jurisdiction of the United States District Court for the Southern District of New York as of October 10, 1963, the Court below declining to follow an October 1, 1963 decision by the Supreme Court of the State of New York, based upon unspecified conceded facts, that at some unspecified earlier date Petitioner Bloomfield was not doing sufficient business in New York to confer jurisdiction over it by that Court in a wholly unrelated action involving different parties.

We submit that to state the foregoing proposition sufficiently demonstrates that it is not an issue worthy of consideration by this Court. The portion of the Opinion of the District Court below, analyzing the evidence taken in this case and distinguishing the decision of the New York Supreme Court on different, stipulated facts, appears at pages 36-39 of the Petition (Appendix D).

CONCLUSION

The Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

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